IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. Radhey Shyam & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.REVISION PETITION NO.1004/2005

2. Jawahar Lal alias Jawaria Vs. State of Rajasthan & Anr.

S.B.CR.REVISION PETITION NO.1033/2005

Both against the order dt.29.9.2005 passed by Additional Sessions Judge (Fast Track), Pratapgarh in Sessions Case No.8/2005.

DATE OF ORDER :: April 24, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr.Ramesh Purohit, for the petitioners.
Mr.J.P.S.Choudhary, Public Prosecutor for the State.
Mr.Rahul Bathi, for complainant.

BY THE COURT:

The petitioners in both the revision petitions have assailed the order dt. 29.9.2005 passed by Additional Sessions Judge (Fast Track), Pratapgarh (for short `the trial court' hereinafter) in Sessions Case No.08/2005, whereby the trial court framed charges against the petitioners for the offences under sections 147, 148, 447, 307/149 I.P.C. and section 3/25 of the Arms Act.

Since both the revision petitions arise out of common order and between the same parties, therefore, with the consent of the counsel for the parties, both the revision petitions have been heard together and are being decided by this common order.

On a report lodged by complainant Dinesh Chandra at police station, Pratapgarh, the police registered a crime report being FIR No.438/2002 against the petitioners and co-accused Akhtar Shah for the offences under sections 147, 148, 447 and 307/34 I.P.C. After usual investigation, a challan was filed against the petitioners and co-accused Akhtar Shah. The trial court by order impugned, framed the charges against the petitioners and co-accused Akhtar Shah for the offences noticed above.

The prosecution story as set up is that present petitioners Radhey Shyam, Unkar Lal, Bagdi Ram, Jawar Lal alias Jawaria and co-accused Akhtar Shah came in a tractor and trespassed to the field of complainant, who were objected by the complainant party whereupon, these five persons mentioned in the FIR inflicted injuries to Bagdi Ram, father of the complainant by kicks and fists as also by chain; the complainant and his wife saved his father from the petitioners and co-accused Akhtar Shah and went to their house. It is alleged that thereafter

petitioner Jawahar Lal alias Jawaria Meena and co-accused Akhtar Shah came on a motorcycle; co-accused Akhtar Shah had a double-barreled twelve bore gun and shouted that he will kill all the family members of the complainant and fired repeated gunshots causing injuries to Bagdi Ram, father of the complainant and a minor Ajay aged about 4 years, the nephew of the complainant.

The trial court framed the charge under section 3/25 of the Arms Act not only against co-accused Akhtar Shah but also against petitioners Radhey Shyam, Unkar Lal, Bagdi Ram and Jawahar Lal alias Jawaria. So far as present petitioners in criminal revision petition No.1004/2005 namely Radhey Shyam, Unkar Lal and Bagdi Ram are concerned, from the evidence on record, prima facie no offence under section 3/25 of the Arms Act is made out against them as it is not the prosecution case that any of them was armed with gun or possessed the gun as also there is no evidence that they had shared a common intention with co-accused Akhtar Shah and in furtherance thereof committed an overt act so far offence under the Arms Act is concerned, however, they actively participated in the first part of the occurrence. As such the offences under sections 147, 148, 447, 323 and 323/149 I.P.C. are made out and therefore, there being no evidence against the petitioners of the revision petition

No.1004/2005 for the offence under section 307/149 I.P.C., however, there is evidence against them for framing of charge for the offence under section 323/149 I.P.C. So far as Arms Act is concerned, there is absolutely no evidence against them and therefore, the order framing charge under section 3/25 of the Arms Act against the petitioners in revision No.1004/2005 cannot be sustained. So far as petitioner Jawahar Lal alias Jawaria in revision petition No.1033/2005 is concerned, he came on a motorcycle along with co-accused Akhtar Shah, Akhtar Shah was armed with a gun and fired repeated gunshot on two persons. Thus, against the petitioner Jawahar Lal alias Jawaria, apart from the offences under sections 147, 148, 149, offence under section 307/34 I.P.C. is also made out. As far as co-accused Akhtar Shah is concerned, the offence under section 307 I.P.C. simpliciter and section 3/25 of the Arms Act apart from the offence under sections 147, 148, 447 and 323/149 I.P.C. are made out.

Consequently, both the revision petitions are partly allowed. The order impugned to the extent of framing charge against petitioners Radhey Shyam, Unkar Lal and Bagdi Ram for the offences under section 307/149 I.P.C. and section 3/25 of the Arms Act is set aside, however, the charge against these petitioners for the offences under sections 147, 148, 447,

323/149 I.P.C. is made out. So far as petitioner Jawahar Lal alias Jawaria is concerned, the offences under sections 147, 148, 447 and 307/34 instead of 307/149 IPC are made out against him and charge for the offence under section 3/25 of the Arms Act against the petitioner Jawahar Lal alias Jawaria is set aside. Stay petitions in both the revisions are dismissed.

[H.R.PANWAR],J.

m.asif/-